

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

February 14, 2002 Session

DIANNA BOARMAN v. GEORGE JAYNES

**Appeal from the Chancery Court for Washington County
No. 6052 Thomas R. Frierson, II, Chancellor**

FILED MAY 31, 2002

No. E2001-01049-COA-R3-CV

Dianna Boarman, Clerk and Master of the Chancery Court for Washington County, brought this lawsuit pursuant to T.C.A. § 8-20-101, *et seq.* (1993 & Supp. 2001), seeking salary increases for her three chief deputy clerks. Defendant George Jaynes, the Washington County Executive (“the County Executive”), answered, denying that salary increases were necessary to enable Boarman to properly and efficiently conduct the affairs and transactions of her office. The County Executive also filed a counterclaim, seeking the elimination of a deputy clerk position in Boarman’s office. The trial court decreed salary increases for Boarman’s three chief deputy clerks and denied the County Executive’s counterclaim. We affirm the trial court’s denial of the County Executive’s counterclaim; but reverse the trial court’s judgment increasing the salaries of Boarman’s three chief deputy clerks.

**Tenn.R.App.P. 3 as of Right; Judgment of the Chancery Court
Affirmed in Part and Reversed in Part; Case Remanded**

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which HOUSTON M. GODDARD, P.J., and D. MICHAEL SWINEY, J., joined.

K. Erickson Herrin, Johnson City, for the appellant, George Jaynes.

Arthur M. Fowler, Johnson City, for the appellee, Dianna Boarman.

OPINION

I.

Boarman filed her initial complaint on September 30, 1998. She alleged that the authorized salary for each of her three chief deputy clerks was \$25,688 annually. She asked that this amount be increased to \$30,460 for fiscal year 1998-99. Boarman filed a second and third complaint for fiscal years 1999-2000 and 2000-01, respectively, seeking for her chief deputy clerks the county government-wide increases that had been granted to other county employees for these two fiscal

years.¹ The County Executive's answer to Boarman's third complaint asserted a counterclaim seeking the elimination of one of the previously-budgeted and funded deputy clerk positions in Boarman's office.

The three complaints were consolidated and a hearing was conducted before Chancellor Thomas R. Frierson, II, sitting by interchange.² The trial court heard extensive testimony regarding the fair and appropriate salary for Boarman's chief deputy clerks. It also heard proof with respect to the salaries of jobs that were alleged to be comparable to that of the chief deputy clerk. The trial court found as follows:

The three chief deputy clerks who form the focus of the present action are skilled, experienced and competent county employees. Their varied job responsibilities provide valuable service to and benefit for Washington County. Their combined service to the county is 69 years. Considering the requisite statutory factors, as well as comparable salaries of other government employees doing similar duties, this Court determines that the annual salaries appropriated and budgeted for the chief deputy clerks of the Clerk and Master's office for Washington County during fiscal year 1998-1999 were below that then prevailing for the nature and type of services required and performed and less than reasonably necessary to retain competent personnel against the enticements of the public sector[.]

The trial court ruled that the three chief deputy clerks were each entitled to annual compensation of \$27,700 for fiscal year 1998-99. The trial court denied the County Executive's counterclaim, finding that the deputy clerk position which the County Executive sought to eliminate was "essential for the proper and efficient operation" of Boarman's office.

The County Executive appeals, raising a number of issues, two of which are dispositive of this appeal:³

1. Did the trial court utilize the proper standard when it determined that the three chief deputy clerks in the office of the Washington County Clerk and Master were entitled to receive compensation in

¹Boarman's second and third complaints sought increases in pay that Boarman alleged had been granted to all county employees except those in her office. Subsequent to Boarman's third complaint, the parties entered into a consent order wherein she agreed to strike her allegations relating to county government-wide salary increases.

²The judges of the First Judicial District of Tennessee, the district which includes Washington County, recused themselves.

³The County Executive's brief enumerates ten issues for review, all of which we pretermitt except the two stated in the text of this opinion.

excess of that appropriated and budgeted by the Washington County Commission?

2. If the trial court did apply an improper standard, does the evidence preponderate against a finding that the Clerk and Master cannot properly and efficiently conduct the affairs and transact the business of her office by employing her staff as constituted at the time of filing of her various complaints?

These related issues will be addressed as one.

II.

A request to a court under T.C.A. § 8-20-101, *et seq.*, for authority to employ deputies or assistants and to establish their salaries is treated like any other lawsuit. ***Dulaney v. McKamey***, 856 S.W.2d 144, 146 (Tenn. App. 1992). Therefore, our review is *de novo* upon the record with a presumption of correctness as to the trial court's findings, unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d); ***Dulaney***, 856 S.W.2d at 146. The trial court's conclusions of law are also subject to a *de novo* review, but with no presumption of correctness. ***Union Carbide Corp. v. Huddleston***, 854 S.W.2d 87, 91 (Tenn. 1993).

The relevant statutory scheme, T.C.A. § 8-20-101, *et seq.*, provides, in pertinent part, as follows:

T.C.A. § 8-20-101(a) (Supp. 2001)

Where any one (1) of the clerks and masters of the chancery courts, the county clerks and the clerks of the probate, criminal, circuit and special courts, county trustees, registers of deeds, and sheriffs cannot properly and efficiently conduct the affairs and transact the business of such person's office by devoting such person's entire working time thereto, such person may employ such deputies and assistants as may be actually necessary to the proper conducting of such person's office in the following manner and under the following conditions, namely:

* * *

(3) The clerks and masters of the chancery courts, county trustees, county clerks and clerks of the probate courts, and registers of deeds may make application to the chancellor, or to one (1) of the chancellors (if there be more than one (1)), holding court in their county by sworn petition as above set forth, showing the necessity for

a deputy or deputies or assistants, the number required and the salary each should be paid.

T.C.A. § 8-20-102 (1993)

... the court shall promptly in term or at chambers have such a hearing on the application, on the petition and answer thereto, as will develop the facts, and the court may hear proof either for or against the petition. The court may allow or disallow the application, either in whole or in part, and may allow the whole number of deputies or assistants applied for or a less number, and may allow the salaries set out in the application or smaller salaries, all as the facts justify.

T.C.A. § 8-20-103(a) (1993)

No deputy or deputies or assistants shall be allowed to any office, unless the actual officer is unable to personally discharge the duties of the office by devoting such officer's entire working time thereto, except field deputy sheriffs.

By its clear and unequivocal terms, this statutory remedy only applies “[w]here...the clerk[] and master[]...cannot properly and efficiently conduct the affairs and transact the business of [her] office by devoting [her] entire working time thereto...” T.C.A. § 8-20-101(a). Pursuant to this statutory language, our courts have consistently required an office holder seeking relief under this scheme to make a threshold showing of his or her inability to properly and efficiently conduct the affairs of his or her office. See *Cunningham v. Moore County*, 604 S.W.2d 866, 868 (Tenn. Ct. App. 1980); *Easterly v. Harmon*, C/A No. 01A01-9609-CH-00446, 1997 Tenn. App. LEXIS 820 at *10-11 (Tenn. Ct. App. W.S., filed Nov. 19, 1997), *perm. app. denied* May 26, 1998; *Roberts v. Lowe*, C/A No. 03A01-9610-CC-00333, 1997 Tenn. App. LEXIS 256 at *12 (Tenn. Ct. App. E.S., filed April 16, 1997); *Smith v. Plummer*, 834 S.W.2d 311, 313 (Tenn. Ct. App. 1992); *Jones v. Mankin*, 1989 Tenn. App. LEXIS 325 at *20 (Tenn. Ct. App. M.S. filed May 5, 1989), *reh’g granted* June 2, 1989.

From our review of the testimony and other evidence presented to the trial court, it is clear to us that Boarman’s suit, from its inception, has revolved around the question of the *fairness* of the salaries of her chief deputy clerks, rather than whether Boarman was able to conduct the affairs and business of her office as it was staffed and funded by Washington County at the time of the filing of her complaint. In this connection, Boarman testified at trial as follows:

Q: You are, you and your -- it’s your belief that your office is working very effectively to serve the public and the Judges as you now operate?

A: I think it is.

Q: Okay. You are not understaffed?

A: No.

Q: And you're satisfied with the number of staff you now have?

A: Well, no, I'm not. I intend to fill the one remaining position that I have.

Q: That's the position that's been vacant since October 30, 1998, nearly two years. True?

A: Yes.

* * *

Q: When you filed this suit and I took your deposition to identify your reasons for filing this suit, you identified two. One, the CTAS survey⁴ that's already been introduced into evidence, and number two, perceived inequities of pay within the county organization.

A: Yes.

Q: And are there any others that you want to put on the table today?

A: Just fairness, equity to my people.

Boarman further testified that "I filed a lawsuit based upon that [*i.e.*, the CTAS survey] and the fairness of what they're paid. I don't think they receive a fair compensation."

Regarding her workload and that of her employees, Boarman testified in her pretrial deposition as follows:

Q: Are there any of your employees who work more than forty hours a week?

⁴The "CTAS survey" referred to is a survey conducted by the Tennessee County Technical Assistance Service for fiscal year 1997-98, showing annual budgeted salaries for various county employees of selected counties. Boarman's initial complaint alleges that the survey "shows that [her] Chief Deputies during the last fiscal year only earned 85% of the average compensation of chief deputies in other comparable counties."

A: I would say not.

Q: So, ...

A: On a routine basis, no.

Q: How about yourself? What are your. . .

A: I pretty much keep to the same hours.

Q: Which is the thirty-seven and a half hours per week?

A: Yes. Of course I stay sometimes out of necessity, but I wouldn't say I do that a great deal of the time.

The evidence is devoid of any suggestion that Boarman may lose employees due to the budgeted salary levels; nor does the proof show that she has had any difficulty filling positions in her office with competent personnel. To the contrary, Boarman's deposition testimony on this point is as follows:

Q: Have any of your chief deputies told you or informed you that they are leaving if they do not receive a salary increase?

A: No.

Q: So, really what we're dealing with here is not a concern on your part that you're going to lose your chief deputies as it is a fairness issue of how you think your deputies should be paid.

A: I would say fairness is more critical than the thought that they're going to leave.

Karen Redenour, a chief deputy clerk in Boarman's office, testified that the "turnover rates in the Clerk and Master's office...in Washington County are very, very low."

T.C.A. § 8-20-101, *et seq.* does not authorize a trial court to hear a petition by a clerk and master seeking an increase in employees' salaries, where the petition is based upon a perception of unfairness, without more. As noted by the Court of Appeals in ***Jones v. Mankin***, 1989 Tenn. App. LEXIS 325,

It [*i.e.*, T.C.A. § 8-20-101 *et seq.*] brought the courts into the budget fray even though they have no special expertise or experience in management, budgeting, or finance. For over sixty years now, the

courts have been cast in the role of reluctant arbiters of the budget disputes between certain local officials and their county government.

The Tennessee Supreme Court has repeatedly questioned the wisdom of inserting the courts into these local political disputes...However, it has also held that the General Assembly had the authority to do so.

Id. at *7 [citations omitted]. The fairness of a county employee's salary is an issue much more appropriately directed to the county legislative body responsible for the budgeting and appropriating of county funds. This is a part of what these county officials are elected to do. The language of T.C.A. § 8-20-101 *et seq.* suggests that the legislature intended the courts to be "brought into the budget fray" only in a limited situation, *i.e.*, when certain officials can demonstrate that they "cannot properly and efficiently conduct the affairs and transact the business of such person's office by devoting such person's entire working time thereto." T.C.A. § 8-20-101(a).

The evidence presented by Boarman does not meet the required showing, *i.e.*, that she was unable to properly and efficiently conduct the affairs of her office by utilizing the efforts of her staff as constituted and compensated at the time of the filing of her complaint. *See Cunningham*, 604 S.W.2d at 868 (affirming the trial court's holding that "the plaintiff has failed to carry the burden of proof of showing that the Sheriff cannot properly and efficiently conduct the affairs of his office and transact the business under the present setup."); *Jones*, 1989 Tenn.App. LEXIS at *20 (holding that "[t]he sheriff has not demonstrated that he cannot operate the jail without these [petitioned-for additional] employees."). Boarman was quite candid and forthright about the fact that her lawsuit was filed in an attempt to rectify perceived issues of unfairness and inequality regarding her three chief deputy clerks' salary levels. While her concern for her employees is admirable, the county legislative body is the correct forum for these issues to be heard and debated. We find that the evidence preponderates against the trial court's factual findings supporting its judgment fixing the salaries of Boarman's chief deputy clerks.

III.

We now address the issue raised by the County Executive's counterclaim. The counterclaim states as follows:

[T]he budget for the Clerk and Master's office is funded for seven (7) employees. One of the funded positions has been vacant since October 30, 1998 and is no longer "actually necessary to the proper conducting of" the Clerk and Master's office as contemplated by Tenn. Code Ann. 8-20-101(a).

The County Executive's counterclaim was filed pursuant to T.C.A. § 8-20-105 (1993), which provides as follows:

It is the duty of all officers mentioned above to reduce the number of deputies and assistants and/or the salaries paid them when it can be reasonably done. The court or judge having jurisdiction may, on motion of the county executive, and upon reasonable notice to the officer in whose office the deputies or assistants to be affected are, have a hearing of such motion in term or in vacation, at chambers, and may reduce the number of deputies or assistants and/or the salaries paid any one (1) or more when the public good justifies.

The parties disagree as to the necessity of the seventh deputy clerk position in Boarman's office. The trial court found as follows regarding this position:

An additional full time deputy clerk position has been budgeted and funded since 1994. In October 1998, a vacancy occurred relative to this position. During the course of this litigation and since October 1998, [Boarman] has attempted to meet the work demands of her offices through the use of a part time position in lieu of filling the full time position in question.

* * *

The Court concludes that the full time deputy clerk position, currently budgeted and funded for the office of Clerk and Master for Washington County, Tennessee, is essential for the proper and efficient operation of said office. The public good does not justify the elimination of the position. The Court directs that this position shall not be eliminated and Plaintiff is authorized to hire an appropriate staff person to fill the position.

As the trial court noted, the salary for the seventh deputy clerk position has been budgeted and funded by the County Commission since 1994. Boarman introduced into evidence the proposed letter of agreement⁵ for fiscal year 2000-01, proposed by the Washington County Commission but not signed by the parties, which included the funding of the seventh deputy clerk position at a level of \$23,586.20. As noted above, the trial court, after conducting a hearing, found the position

⁵T.C.A. § 8-20-101(c) (Supp. 2001) provides the procedure for preparing and filing a letter of agreement as follows:

In the event the county official agrees with the number of deputies and assistants and the compensation and expenses related thereto, as set forth in the budget adopted by the county legislative body, the county executive and the county official involved may prepare a letter of agreement, using a form prepared by the comptroller of the treasury setting forth the fact that they have reached an understanding in this regard. This letter of agreement shall be filed in court; however, no court costs, litigation taxes or attorneys fees shall be assessed.

necessary to the efficient operation of Boarman's office and set the salary for the seventh deputy clerk position at \$22,250, a level below that authorized by the County Commission. We find that the evidence does not preponderate against the trial court's findings regarding the deputy clerk position at issue here.

IV.

The trial court's judgment increasing the salaries of the Clerk and Master's three chief deputy clerks for fiscal year 1998-99 is reversed. The court's judgment refusing to eliminate the seventh deputy clerk position in the Clerk and Master's office, and setting the salary for that position, is affirmed. This case is remanded for such further proceedings, if any, as may be required, consistent with this opinion. Costs on appeal are assessed to the appellee, Dianna Boarman.

CHARLES D. SUSANO, JR., JUDGE